IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 19.1.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.455 of 1992

1.N.Kunjithapatham (died)
2.K.Sarojini
3.Vijaya Elangovan
4.K.Sivaji
5.Anitha Subhashini
6.S.Arunkumar
7.K.Chandrasekar
8.C.Kavitha Poorani
9.C.Praveen Kumar
10.Rahini Somasekar ..Appellants/plaintiffs
Appellants 2 to 10 have been brought on record as L.Rs of the deceased sole appellant vide order of Court dated 26.6.2001 in C.M.P.7537 of 1999

vs.

1.Tamil Nadu Small Scale Industries Corporation, by its Managing Director No.1, Whites Road, Madras 600 014.

2.Tamil Nadu Small Scale Development Corporation, by its Managing Director, at No.5, Greems Road, Madras 600 006. .. Respondent/defendants

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The Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 14.9.1989 made in O.S.No.2356 of 1986, on the file of the 16th Assistant Judge, City Civil Court, Madras.

For Appellants : Mr.A.Muralikrishna Anandan
for Mr.M.V.Venkatakrishnan

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For Respondents

for R1 : Mr.R.Mukundan for
Mr.N.S.Varadachari

for R2 : Ms.Deepa Devi
for M/s.Aiyar and Dolia

JUDGMENT

This appeal is filed against the Judgment and decree dated 14.9.1989 in O.S.No.2356 of 1986 on the file of the 16th Assistant Judge, City Civil Court, Madras in and by which the learned Sub Judge after analysing the evidence found that the the plaintiff is not entitled to the suit claim and accordingly dismissed the suit. The plaintiff is the first appellant in this appeal. Appellants 2 to 10 have been brought on record as L.Rs of the dead sole first appellant.

2. For convenience, the parties are referred as arrayed in the Original Suit. The plaintiff states as follows:-

2.1. The plaintiff is carrying on his business in Packaging Industry under the name and style of Vijaya Packaging Industries in Unit No.A 27 Industrial Estate, Guindy, Madras 600 032. The Unit No.A 27 was allotted to the plaintiff in the year 1974 in the first instance on rental basis. The plaintiff had been acting in accordance with the terms of the rental agreement. Subsequently on 1.7.1983 the second defendant converted the same into a lease-cum-sale agreement in and by which the plaintiff was obliged to pay a sum of Rs.42,032.42 per year (in two equal installments) and all the installments had been paid on time and the last installment of Rs.21016/21 is to be paid on or before 1.4.86. Thus the plaintiff is the owner of Unit No.A.27 Industrial Estate.

2.2 The plan showing the situation of the plaintiff's Unit A-27 is filed. That was the plan approved by the 2nd defendant SIDCO. On the northern side is situate this Tansi Enamelled Wires owned by the first defendant. There is open space in between these two units on the northern side to a length of about 38 feet. This is as per the construction originally made for the two units.

2.3. The plaintiff has got his machineries in the unit and the open space on the northern-side is absolutely essential for the working of the factory and the plaintiff has been using the same since the date of original allotment in 1974. As a matter of fact on the northern side as shown in the Sketch there are 4 doors for ingress and egress from and to the open space. The size of the each door is 4 feet X 10 feet. There are 12 windows on the northern wall of the plaintiff's Unit. The first and second

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defendant did not raise any objection to the use of the open space on the northern side by the plaintiff as they were aware that it forms part and parcel of the plaintiff's wing. Out of the 38 feet length available in between the units. The 19 feet is necessary adjunct to the plaintiff's unit as per the original construction of the two units. This is the position accepted by the defendant right from the beginning. The plaintiff is running his business having an annual turn over of Rs.60/- lakhs. If the plaintiff is prevented from using the 19 feet, he will be put to irreparable loss and hardship and the business will be seriously affected. In the plaintiff unit there are 45 workmen.

2.4. The plaintiff has been right from 1974 using the 19 feet on the northern side from his northern wall of the Unit and the defendant acquiesced the same. All the industrial units in the Estate have right in one-half of the open space in between the two units. This factual position cannot at all be disputed by the defendants. This is the position right from the day the Industrial Estate was formed and the units were constructed. As the plaintiff has become the owner of the unit by paying all the amounts due to the second defendant, it has become necessary in view of the attitude of the first defendant, to have the matter adjudicated between the plaintiff and the first defendant once for all by praying for a declaration of his right and title in the open space on the northern side of his Unit. By virtue of his being the owner of the Unit, he is also the owner of the open space 19 feet from the northern wall north to south and 202'-3' East to West. The first defendant without any justification whatsoever is attempting to interfere with the rights of the plaintiff. The plaintiff is the owner of the open space mentioned above. The boundary recitals in the earlier documents between the plaintiff and the 2nd defendant would establish the claim of the plaintiff. Clause 9 of the proceeding dated 1.7.1983 relating to conversion of rental sale to hire purchase is also relevant.

2.5. In I.A. No.6186/85 this Court appointed a Commissioner to inspect the property and give a report about the location thereof. The Advocate Commissioner submitted a plan along with the report. The entire open space between the northern wall of the plaintiff's unit and the southern wall of the first defendant's unit is shown in the plan. The width of the open space is 38 feet. In this open space, the plaintiff is entitled to 19 feet from the northern wall of his unit. On the eastern side the first defendant has put up construction without any reference to the plaintiff beyond 19 feet from the southern wall of the first defendant which is not authorised in law. The portion beyond 19 feet from the southern wall of the first defendant is shown as X, X-1, X-2 and X-3. The portion above mentioned has to be demolished by the fist defendant. The first

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defendant has no right to put up any construction beyond 19 feet from the southern wall of the first defendant unit. The construction unauthorisedly put up by the 1st defendant affects the plaintiff's user of the unit for industrial purposes. The entire open space of 19 feet from the northern wall of the plaintiff which is appurtenant to the plaintiff's unit is essential for his enjoyment. Having regard to the right of the industrial units in the Estate to have the appurtenant land and the transactions between the unit holders and the second defendant every unit holder is obliged to the adjacent owner to have the right to one half of the open space in between the two units. The first defendant is under an obligation not to interfere with the right of the plaintiff to 19 feet of the open space on the northern side. Inasmuch as the first defendant is committing the breach of the obligation it is necessary to compel the performance by issue of mandatory injunction. Therefore, the first defendant should be directed to demolish the portion marked in the sketch as X,X-1, X-2, X-3 which is beyond the 19 feet from the southern wall of the first defendant.

2.6. While so, the first defendant in the month of January 1986 published in the News Papers calling for tenders for the sale of Tansi Enamelled Wires, Guindy. In the tender document, a plan is attached showing Tansi Enamelled Wires and as per the plan the open space between Tansi Enamelled Wires and the Plaintiff's unit is about 3 feet only. On 30.1.86 the plaintiff wrote a letter to the 2nd defendant through its Deputy Manager stating that the boundary line between the plaintiff's unit and the Tansi Enamelled Wire should be marked in the open space available and the plaintiff further requested that such a demarcation to be made before the auction of the Tansi Enamelled Wire. The plaintiff further stated the open space be allotted equally. This letter was handed over to the Deputy Manager by the plaintiff's son Mr.K.Sivaji. There was no reply at all from the second defendant. The second defendant is in entire management of the Industrial Estate. Now the auction of Tamil nadu Tansi Enamelled Wires Ltd. Of the first defendant is to be auctioned on 31.3.1986. With respect of allotting the space as requested by the plaintiff in his letter dated 30.1.85 and if third party purchased the property that will give rise to complications and disputes. Further, the running of the business by the plaintiff will be jeopardised. Even in the rental agreement in the year 1974 executed between the plaintiff and the second defendant northern boundary of the plaintiff's unit open space and Tansi Enamelled Wires is given. The defendants being public authority are bound in law to act in accordance with the provisions of the Factories Act and the Rules and Regulations relating to buildings and Factories framed by M.M.D.A.

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2.7. In the Rental agreement, it is specifically stated that every unit holder should use the premises allotted to him without causing any inconvenience to neighbouring unit holder. Such clause is applicable to the first defendant also. Therefore, the defendants in law, are bound to see that the factories, functioned without causing any hardship to the other unit holder. The second defendant who is in charge of the management of the entire Industrial Estate is duty bound to demarcate the boundary of unit to see that the user of the units is done with advantage. The second defendant ought to have clearly delienated the boundaries, providing the open space on the northern side to a length of 19' in the sketch filed along with plaint. On the front portion on the northern side there is a construction on the neighbouring unit even at the time when it was allotted to the plaintiff.

2.8. The first defendant is not entitled to interfere with the right of the plaintiff in the open space for width of 19 feet from the northern wall of the plaintiff. The plaintiff is now obliged to pray for mandatory injunction.

3. The first defendant states as follows:

3.1. The defendant is governed by the terms of allotment by the second defendant relating to the plaintiff's suit in the Industrial Estate. The plaintiff is also an allottee, therefore, he cannot seek to lay any claim in respect of the land belonging to and allotted to this defendant. The suit therefore as against the defendant is not maintainable.

3.2. The prayer in the suit for permanent injunction restraining the 1st defendant from putting up Tansi Enamelled Wire Works for auction without leaving any space between Tansi Enamelled Wire Unit and Unit A 27 of the plaintiff is not sustainable. In any event, the unit has already been auctioned and the sale has already been finalised. The prayer therefore has become infructuous.

3.3. The plaintiff is governed by the terms and the allotment made by the second defendant in his favour, wherein measurements should have been given relating to the plot allotted to the plaintiff. First defendant is entitled to deal with the Tansi Enamelled Wire Unit with land as allotted to them, and also building and machinery belonging to them. The plaintiff has therefore no manner of right whatsoever. The defendant has not encroached any area of land as alleged by the plaintiff. There is no question of the plaintiff at all using the 19 feet. Since the area belongs to this defendant.

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3.4. The defendant owns and has been continuously in possession of the whole area of land. The plea of the plaintiff that all the industrial unit in the Estate have right in one-half of the open space in between the two units, right from the day the Industrial Estate was formed and the units were constructed is not correct.

3.5. The plaintiff is not at all entitled to claim ownership of the open space of 19 ft. from the northern wall (i.e. Wall of 202'-3" length East-West). The first defendant has been holding the ownership of the open space all along and even the plaintiff did not object to it will the present suit is filed. The lay out of land belonging to A-27 unit as furnished by the second defendant (SIDCO, Industrial Estate Guindy) will show that the land belonged to this defendant only.

3.6. The plaintiff is only eligible to the extent of 14193 sq.ft. Of the land allotted to them by the second defendant.

3.7. Plaintiff will be squarely responsible for the loss which the first respondent will be sustaining due to the hurdles to sell its properties to private parties on account of unwarranted suit filed by the plaintiff for untenable and unjustifiable causes.

3.8. The Construction of Office building was made by the first defendant during 1968 in the area of land owned by them even before the occupation of plaintiff A-27 unit during 1974. The construction was made by the first defendant after following the rules and regulation prevailed at that time which cannot be questioned after 18 years. The question of demolishing the building does not arise at all, since the first defendant has the right to put up the construction in the area of land owned by them. The construction of building has been an authorised one and it does not affect any way the Industrial activities of the plaintiff. The first defendant has not interfered with the rights of the plaintiff and has not committed any breach of the obligation since the first defendant is entitled to use the open space owned by them and allotted by second respondent. Therefore the plaintiff is not entitled to any relief of injunction compelling the defendant to demolish the building owned by them. Therefore, the suit is liable to be dismissed.

4. The second defendant states as follows:-

An area of 14,193 sq.ft. was only allotted to the plaintiff under lease cum sale and the open space of 38 feet was not at all included in the unit allowed to the plaintiff. It is pertinent to note that even at the time of allotment on rental basis only rent for building was collected. The plaintiff has got no right much

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less legal right over the o0pen space. The plaintiff has filed the suit only with the view to harass this defendant. The plaintiff has no cause of action against this defendant. Hence the suit is liable to be dismissed.

5. One Mr.Sivaji was examined as P.W.1. Exs.A.1 to A.13 were marked on the side of the plaintiff to prove the claim. One Mr.K.Venkatesan was examined as D.W.1. Exs.B.1 and B.2 were marked on the side of the defendants to confront the claim of the plaintiff. Ex.D.1 and D.2 were marked as Court witnesses.

6. The lower court after analysing the evidence in depth found that the plaintiff is not entitled to the suit claim and dismissed the suit. The plaintiff is the appellant.

7. Heard A.Muralikrishna Anandan, learned counsel for the plaintiffs and Mr.R.Mukundan and Ms.Deepa Devi, learned counsel for the first and second respondent respectively.

8. Upon hearing the rival claims, the points for consideration are:-

(i) Whether the suit claim become infructuous in view of the fact that the disputed land was already sold and in possession of third parties and not under the possession of the defendants?

(ii)Whether the plaintiff is entitled to suit relief in pursuance of any agreement between him and the second defendant.

9. Point No.1

Admittedly, there was no agreement between the plaintiff and the second defendant for resting the right of the disputed land with the first plaintiff. Even according to the evidence of the plaintiff, the first defendant has already put up a preliminary structure in the disputed land and enjoying the same. It is also admitted that the disputed land was already sold by auction by the defendants. Even according to the evidence of the plaintiff, and the documents filed herein would show that the plaintiff had right only in respect of an area of 14,193 sq.ft. There was a lease cum sale agreement in respect of an area of 14,193 sq.ft. between the plaintiff and the second defendant. There was no lease cum sale agreement in respect of the open space of 38 ft, which is the disputed land between the plaintiff and the second defendant. The written pleadings of the second defendant reads as follows:- "An area of 14.193 sq.ft. was only allotted under lease cum sale and the open space of 38 feet was not at all included in the unit allowed to the plaintiff. It is pertinent to note that even at the time of allottment on rental basis only rent for building was collected. The plaintiff has got no right much less legal right over the open space". The plaintiff failed to file any documentary evidence contra to the pleading of the second

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defendant. As on date, the disputed land is neither with the first defendant nor with the second defendant. It was already sold by auction to third parties, which fact was admitted by plaintiffs. In fact, the first defendant in his written statement specifically stated this fact. The written pleadings of the first defendant reads as follows:- "The prayer in the suit for permanent injunction restraining the first defendant from putting up Tansi Enamelled Wire Works for auction without leaving any space between Tansi Enamelled Wire Unit and Unit A-27 of the plaintiff is not sustainable. In any event, the unit has already been auctioned and the sale has already been finalised." This statement has been filed as early as on 25.10.87. For the past 10 years, the disputed land is enjoyed by the third parties. They were not under the possession and enjoyment either by the first defendant or by the second defendant. In such view of the fact, I am constrained to hold that the suit relief become infructuous as the disputed land was already sold by public auction. Hence this point is against the appellant/plaintiff.

Point 2:- The second defendant filed a written statement denying the right of the plaintiff with respect to the disputed land. The second defendant further stated that there was an agreement of sale between him and the plaintiff only with reference to an area of 14.193 sq.ft. For which there is no grievance for the plaintiff. The second defendant alone is the proper person to confront the claim of the plaintiff. Admittedly there was no agreement in favour of the plaintiff with reference to the suit claim. Even otherwise according to the plaintiff, the first defendant has put up a structure in the land under possession and enjoying the same. Even according to the plaintiff, the first defendant has put up constructions in the open space viz., in the 19 ft width to an extent of 11 ft in width X 202'3" in length leaving a space of 8 ft width X 202'3" in length and enjoying the same. The plaintiff miserably failed to file any document to sustain his claim in respect of the open space which is under dispute. So, I am satisfied that the plaintiff is not entitled to the suit claim. The lower court also has analysed the evidence in depth and found that the plaintiff is not entitled to the suit claim and dismissed the suit.

10. I do not find any error or mistake in the finding of the lower court. The finding of the lower Court does not require any interference. Accordingly, the appeal fails and the same is dismissed. Parties have to bear their respective costs.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The 16th Assistant Judge, City Civil Court,
Madras.

2. The Registrar,
City Civil Court, Madras.

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